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611.944/4-1453
XR 811.05194; 894.053

FOREIGN SERVICE DESPATCH

FROM : AMEMBASSY, TOKYO

2118

DESP. NO.

TO : THE DEPARTMENT OF STATE, WASHINGTON.

April 14, 1953

REF : Deptel 2260, March 19, 1953

DEPARTMENT OF STATE

REVIEWED BY *Jattarab*

3/19/82

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SUBJECT: FCN Treaty and Investment in Japan

The Embassy's reply to the Department's telegram under reference was delayed pending final discussions with the Japanese representatives and the signing on April 2 of the Treaty of Friendship, Commerce and Navigation. Despatches are now in preparation in response to the Department's A-648 of March 3, 1953 (concerning remittance rights of United States nationals owning prewar outstanding shares in Japanese enterprises), and A-783 of March 31 (concerning the history, administration, et cetera, of the Foreign Investment Law). The Embassy's reply to the latter airgram, in particular, will further clarify questions regarding Japan's intentions with reference to the administration of the provisions of paragraph 15 of the Protocol to the FCN Treaty.

The Foreign Investment Law permits the acquisition by aliens of new shares in Japanese enterprises, but requires that advance approval by the Ministry of Finance be obtained if the alien investor desires to acquire outstanding shares or proprietary interests. This approval is seldom, if ever, granted, and the effect of the Law is to prohibit the purchase by aliens of outstanding shares in Japan. During negotiation of the FCN Treaty this particular subject was one of greatest concern to the Japanese Government, as well as to leading business organizations which demanded that the Treaty should be modified to recognize Japan's right to continue these restrictions under the Foreign Investment Law for an indefinite period. Influential associations, among them the Federation of Economic Organizations, declared that these limitations were essential to prevent aliens from acquiring control of Japanese industry. They pointed out that values of outstanding shares of Japanese enterprises are very low in comparison with their assets, principally because equity capital represents only a fraction of corporate assets which have been magnified as a result of currency depreciation, an excessive reliance on credit, and the reluctance of many enterprises to complete postwar recapitalization because of the higher taxes involved. As a result of this situation, Japanese business circles alleged, alien investors could, with a very modest investment, acquire controlling interests in Japan's leading enterprises.

This position impressed Japanese officials, particularly when, during the FCN Treaty negotiations, numerous cases were reported in the press of stock-market operators who acquired large blocks of shares in some of Japan's large concerns, principally department stores, with a small investment. Many of these ventures involved the subsequent resale of shares at great profit to the management.

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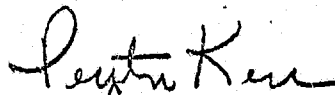
of the enterprises concerned under threat of complete reorganization of the firm or the transfer of the shares to competing companies. The Federation of Economic Organizations urged the Government to negotiate with the United States on the basis of continued application of the provisions of the Foreign Investment Law, but ultimately agreed that rationalization and recapitalization of Japanese enterprises could be completed in 3 to 5 years, thereby removing the danger of alien control through modest investment. The Cabinet was of the opinion that Japanese enterprises could get their house in order in the shorter period, and instructed the Ministry of Foreign Affairs to demand the inclusion of a reservation in the Protocol to the FCN Treaty, permitting the continuation of restrictions on the purchase by aliens of outstanding shares for a period of 3 years.

The position of the Japanese Government in this connection is understandable. It is true that unrestricted purchases of outstanding shares at this time would permit aliens to acquire controlling interests in Japanese firms at a very low cost and, possibly, to the detriment of the economy. It must be pointed out, however, that United States investment in Japan in the postwar period has involved purchases of new shares, by either cash investment or technological, patent, or other arrangements. There has been little interest in the purchase of outstanding shares because of the remittance problems involved, although some individuals who are resident in Japan and have little or no need for foreign currency are interested in such stock-market operations. In practice, however, these foreigners are purchasing outstanding shares through Japanese intermediaries and thus benefit from the high dividends in yen paid by some domestic enterprises.

Paragraph 15 of the Protocol to the FCN Treaty does not, of course, affect United States investment in Japan when such investment, as has been characteristic in the postwar period, involves the acquisition of new shares. With respect to the purchase of outstanding shares, however, it is the intention of the Japanese Government to continue the present restrictions of the Foreign Investment Law without change for the 3-year period following the ratification of the Treaty. There is, therefore, no plan progressively to relax these restrictions, and any move in this direction would be strenuously opposed by Japanese business and industrial organizations.

The Department's attention is also invited to the Embassy's despatch 2119 of April 14, 1953, entitled "Transmittal of Memoranda of Conversation on FCN Treaty", which reports the proposals and observations of the Japanese representatives at the recent negotiations with reference to the acquisition of outstanding shares and the provisions of paragraph 15 of the Protocol to the FCN Treaty.

For the Ambassador:


Peyton Kerr
First Secretary of Embassy

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